

**TOWN OF NANTUCKET
BOARD OF HEALTH**

In the matter of:	<u>ADMINISTRATIVE CONSENT ORDER</u>
Property belonging to	Future Extensions
<u>Property Owner</u>	of the Nantucket
<u>Address</u>	Municipal Sewer System
Nantucket, MA 02554	
Regarding: <u>Property Address</u>	
Deed Book: Page:	
<u>Assrs. Map 6-3 Pcl: 53-0-R</u>	

PARTIES

1. The Town of Nantucket (the “Town”), acting by and through its Board of Health (“Board”), is a **municipal corporation** within the Commonwealth of Massachusetts with offices at 2 Fairgrounds Road, Nantucket, MA. 02554.
2. **Property Owner, (the “Respondent”)** is the owner of structures located at **Address** in the Town (the “Property”). **Respondent’s mailing address is - *Insert mailing address if different from property address.***

PURPOSE

3. This **Administrative Consent Order (“Consent Order”)** is entered into under the authority of **M.G.L. c.111, §§ 31 and 122, and G.L. c.21A, §13**, and in fulfillment of the requirements of **310 CMR 15. 305(1)(b)**.

STATEMENT OF FACTS

4. The Town is mandated through the Massachusetts Estuaries Program (MEP), under the jurisdiction of the Massachusetts Department of Environmental Protection (MassDEP), to reduce nitrogen loading in specific areas of Town and to meet Total Maximum Daily Loads (TMDLs) set by the state in the Nantucket Harbor, Madaket Harbor, Long Pond, Sesachacha Pond and potentially other embayment areas of Town. The Town’s Harbor Watershed Districts (Nantucket and Madaket) also detail reduction of nutrient loading from on-site wastewater disposal systems.

5. In order to meet these mandates, the Town is currently engaged in facilities planning for future phases of a municipal Comprehensive Wastewater Management Plan (CWMP), which includes provisions for additional sewerage of portions of the Town, which may include the area within which the Property is located.
6. Because the planning, design and installation of sewers in these new areas is expected to take some time, the Board of Health wishes to provide options for property owners who currently have failed on-site wastewater disposal systems in areas proposed for municipal sewer. Therefore, to alleviate the burden on property owners who may have to pay for an expensive septic system upgrade, replacement or repair and then have to pay again to connect to the Municipal Sewer, the Board has enacted a regulation to provide for deferrals in certain circumstances.
7. The **Respondent** currently owns and/or operates an on-site wastewater disposal system on the Property (the "System"), which currently fails to meet the requirements of the State Environmental Code, Title 5, the Nantucket Board of Health Regulations and/or orders of the Nantucket Board of Health, and such system requires upgrade, repair or replacement.
8. The Respondent has had the System inspected by a licensed Title 5 Inspector and the Board of Health has confirmed that the System is not in Hydraulic Failure, as that term is defined in the Nantucket Board of Health Septic System Upgrade Deferral Regulation.
9. The Nantucket Board of Health has determined that the costs of upgrading, replacing or repairing the System at this time is excessive in light of the probability that Municipal Sewer will be available in the near future and that such upgrade, replacement or repair can be deferred for a definite period of time without creating an unreasonable threat to public health, safety or the environment.

CONSENT ORDER

10. The Respondent is not required to undertake the upgrade, repair or replacement of the System so as to achieve compliance with Title 5 and/or the Board's regulations at this time.
11. Notwithstanding Paragraph 10 of this ACO, the Respondent shall undertake the following remedial measures:
12. Nothing contained herein shall be construed as limiting in any way the authority of the Board of Health to issue such other orders or require such further remedial measures as may be necessary, in the judgment of the Board of Health, to abate an threat to public health, safety and the environment that may arise or be discovered after execution of this ACO and the Respondent hereby agrees to comply with all orders of the Board of Health relative to the System. The Board of Health reserves the right to terminate this ACO and require upgrade, repair or replacement of the System at a date earlier than the date specified below, in order to prevent or remedy a threat to public health, safety or the environment, or if it is determined that the System is in Hydraulic Failure.

13. The Respondent shall have the System inspected annually between September 1 and September 30 by a licensed Title 5 Inspector and shall submit the results to the Board.
14. If the Town has commenced construction by January 1, 2017, of a municipal wastewater collection system, which will serve the Property, the **Respondent shall abandon the on-site wastewater disposal system and connect to the Town sewer within sixty (60) days of notice from the Town of the availability of sewer service to Respondent's Property.**
15. The Town reserves its right to extend the deadline for construction of the municipal wastewater collection system and if it does so, the Board of Health may extend the deferral period granted herein.
16. If the Town has not commenced construction by January 1, 2017, of a municipal wastewater collection system, which will serve the Property, the **Town shall notify the Respondent, and the Respondent shall immediately commence with an on-site wastewater disposal system design plan to be approved by the Board of Health and the installation of an on-site wastewater disposal system within ninety (90) days of said notice.** Said Title 5 plan may potentially need to be approved by MassDEP. Such approval by the Board of Health to be obtained at a regularly scheduled meeting. The Respondent shall abandon his/her/their on-site wastewater disposal system by one hundred twenty (120) days from said notice, and complete construction of an on-site wastewater disposal system in accordance with an approved engineered plan.
17. **At the time of the execution of this Consent Order, the Respondent shall deposit in the form of a certified, bank or cashier's check into an insured and interest-bearing account of the Town established and maintained by the Finance Director of the Town pursuant to G.L. c.44, §53A for the purposes stated herein. In the alternative to depositing the full amount, as set forth in the preceding sentence, the Respondent may pay into the fund in 20 installments as shown in the chart on the next page. The schedule represents an annual payment with annual principle and interest charges (2%).**

Principle Amount as per attached Estimate: \$ _____

No.	Year	Payment	Principal	Interest	Balance
1	2013	\$0.00	\$0.00	\$0.00	\$0.00
2	2014	\$0.00	\$0.00	\$0.00	\$0.00
3	2015	\$0.00	\$0.00	\$0.00	\$0.00
4	2016	\$0.00	\$0.00	\$0.00	\$0.00
5	2017	\$0.00	\$0.00	\$0.00	\$0.00
6	2018	\$0.00	\$0.00	\$0.00	\$0.00
7	2019	\$0.00	\$0.00	\$0.00	\$0.00
8	2020	\$0.00	\$0.00	\$0.00	\$0.00
9	2021	\$0.00	\$0.00	\$0.00	\$0.00
10	2022	\$0.00	\$0.00	\$0.00	\$0.00
11	2023	\$0.00	\$0.00	\$0.00	\$0.00
12	2024	\$0.00	\$0.00	\$0.00	\$0.00
13	2025	\$0.00	\$0.00	\$0.00	\$0.00
14	2026	\$0.00	\$0.00	\$0.00	\$0.00
15	2027	\$0.00	\$0.00	\$0.00	\$0.00
16	2028	\$0.00	\$0.00	\$0.00	\$0.00
17	2029	\$0.00	\$0.00	\$0.00	\$0.00
18	2030	\$0.00	\$0.00	\$0.00	\$0.00
19	2031	\$0.00	\$0.00	\$0.00	\$0.00
20	2032	\$0.00	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00	

Such lump sum or apportioned yearly payments shall be made on a schedule developed by said Finance Director, working with the Board of Health, and invoiced a minimum of 30 days prior to due date. Once apportioned, the balance due may be paid at any time reduced by unaccrued interest.

- 18 Failure of the **Respondent** to make any of the installment payments listed herein shall subject the **Respondent** to the penalties set forth in ¶26 hereof and may result in termination of this Consent Order .
19. The **Respondent** agrees that such funds shall be applied by the Town to defray or satisfy the charges levied against the Respondent or the Property to connect to the municipal wastewater collection system as determined by the **Town in accordance with G.L. c.80 and 83, Chapter 396 of the Acts of 2008, "The Nantucket Sewer Act", is also incorporated into this Consent Order in its entirety.**
20. **If the Town does not proceed** with the construction of a wastewater collection system by January 1, 2017, or any unilateral extension thereof, all funds in the account shall, upon proof that Respondent has entered into a binding contract to construct an on-site wastewater disposal system, be provided to the **Respondent** who shall use said funds to defray all or a portion of the cost of the installation of a conforming Title 5, or any successor code, on-site wastewater disposal system on the Property in accordance with the engineered plan, as approved by the Board of Health and potentially MassDEP. Such approval by the Board of Health to be obtained at a regularly scheduled meeting.

21. In the event that the **Respondent** installs an on-site wastewater disposal system in accordance with an approved engineered plan, at any time during the deferral period, regardless of whether the installation is voluntary or by order of the Board, the Town shall release said funds forthwith to the Respondent for that purpose. **Should Respondent design/construct a Title 5 System, with approval from Board of Health, before the Town's notice of availability of sewer service in his/her area, Respondent acknowledges that he/she may still be assessed betterment/privilege fees associated with construction of the sewer system and he/she may be required to abandon the system and connect to the sewer when it becomes available.**
22. **The Town reserves its right to enforce connection to the municipal sewer system, together with all associated costs/fees, without acknowledgement of any costs incurred by Respondent in connection with his/her on-site wastewater disposal system during the deferral period, including but not limited to any costs incurred in connection with interim remedial measures ordered by the Board of Health.**
23. Upon the Respondent's fulfillment of the terms of this Consent Order all remaining funds shall be returned to Respondent forthwith, together with any interest which has accrued thereon.
24. **In the event that the Respondent transfers title to or an interest in the Property to another person or entity at any time during the life of this Consent Order, the new owner(s)/entity shall become subject to the terms and conditions of this Consent Order. Foreclosing mortgagees shall be entitled to all rights and benefits set forth in this Consent Order. The Consent Order shall be recorded in the chain of title to the Property upon execution thereof and shall remain on the title and run with the title to the Property until such time as the Town, acting by and through its Board of Health, certifies compliance with the terms and conditions herein.**
25. Within five (5) days of the execution of this Consent Order, the Respondent shall provide to the **Board of Health** proof of recording of the Consent Order at the Registry of Deeds or Registry District of the Land Court, as appropriate. The Town may record the Order at the Respondent's expense in the event the Respondent fails to do so.

STIPULATED PENALTIES

26. If any action required by this Consent Order is not completed by the prescribed deadline, the Respondent **shall pay to the Town without demand a stipulated penalty of \$500 per day.** Each day of non-compliance shall constitute a separate violation. **Payment of the penalty shall be made by certified check, cashiers check or money order payable to the Town of Nantucket and such payment shall be mailed to the Board of Health, 2 Fairgrounds Road, Nantucket, MA 02554. Nothing herein shall limit the authority of the Board of Health or Town to pursue additional enforcement measures, whether legal or equitable, including fines and injunctive relief, to enforce this Consent Order or G.L. c. 111, §§31 and 122, G.L. c. 21A, §13 and 310 CMR 15.00.**

OTHER PROVISIONS

27. This Consent Order shall apply to and bind the parties, their officers, employees, agents, successors, heirs, assigns, and all other persons and entities acting under them.
28. The Respondent voluntarily agrees to the terms of this Consent Order. In the event of a disagreement with regard to the implementation of the terms of this Order, the Respondent shall be entitled to seek all remedies available to them from a court of competent jurisdiction.
29. This Consent Order may be modified only upon the written agreement of the Town.
30. **If any terms or provisions of this Consent Order or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Consent Order or the application thereof shall be valid and enforceable to the fullest extent permitted by law.**
31. Each undersigned representative hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the Respondent on whose behalf such representative is signing.

Entered into on _____, 20__.

Respondent(s)

Town of Nantucket Board of Health

Property Owner:

Patricia Roggeveen, Chair
Duly Authorized, Book 1346, Page 151
2 Fairgrounds Road
Nantucket, MA 02554

Property Address:

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS. _____, 20__.

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS. _____, 20__.

Then personally appeared the above-named _____ and _____ and acknowledged the foregoing instrument to be his/her/their free act and deed, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS. _____, 20__.

Then personally appeared the above-named _____ and
acknowledged the foregoing instrument as the free act and deed of the Nantucket Board of
Health, before me.

Notary Public

My Commission Expires: _____

RELEASE FROM CONSENT ORDER

I, _____, elect to
design and construct a conforming Title 5 On-Site Wastewater Disposal System,
with the Nantucket Board of Health's approval before municipal sewer is active in
my area and that I do so at my own option and may still be assessed
betterment/privilege fees when municipal sewer is active in my area. I fully
understand that the Town reserves its right to enforce connection to the municipal
sewer system, together with all associated costs/fees without acknowledgement of
any costs incurred by me as Respondent in this Consent Order with my on-site
wastewater disposal system.

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS. _____, 20__.

Then personally appeared the above-named _____ and
_____ and acknowledged the foregoing instrument to be
his/her/their free act and deed, before me.

Notary Public

My Commission Expires: _____